

Serial No.: 09/472,401

REMARKS

Claims 6 and 9-10 are now pending in the application and have been amended herein. Claims 1-5, 7-8 and 11-24 have been canceled without prejudice or disclaimer. Favorable reconsideration of the application, as amended, is respectfully requested.

I. REJECTIONS OF CLAIMS 1, 2, 6, 9, 10 AND 13

Claims 1-2, 6, 9, 10 and 13 stand rejected under 35 USC §103(a) based *Huang et al.* in view of *Haskell et al.* Withdrawal of the rejection is respectfully requested for at least the following reasons.

Claims 6 and 10 recite a decoding section that starts decoding bit streams after accumulating, in a bit stream accumulation section, the bit streams for a time period of a value set by multiplying one frame time period with a value obtained by dividing the maximum possible transfer rate by the minimum possible transfer rate.

The Examiner has rejected the claims, indicating they are obvious over *Huang et al.* in view of *Haskell et al.* In establishing obviousness, however, the Examiner has the burden of showing a prima facie case of obviousness. A prima facie case of obviousness requires a showing that the references teach or suggest all the limitations of the claimed invention.

The Examiner has taken official notice that decoding devices for decoding compressed audio/video signals are well known. The Examiner apparently feels that the limitations recited in claims 6 and 10 with respect to the decoder are well known. Applicants, on the other hand, respectfully submit that such application of official notice is improper.

Referring to §2144.03 of the MPEP , it states:

Official notice without documentary evidence to support an examiner's conclusion is permissible only in some circumstances... [T]he notice of facts beyond the record which may be taken by the examiner must be capable of such instant and unquestionable demonstration as to defy dispute.

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It would not be appropriate for the examiner to take official notice of facts without citing a prior art reference where the facts asserted to be well known are not capable of instant and unquestionable demonstration as being well-known.

As was noted above, the Examiner's use of official notice with respect to the decoding device is not clear. The Examiner simply states "tak[ing] official notice that the decoding device decoding the compressed audio/video data is obviously well known features for reverse processing the encoding device for displaying the compressed data" (See page 5, first paragraph of the Office Action).

The Examiner apparently feels that all the limitations recited in claims 6 and 10 with respect to the decoding device are well known. Applicants respectfully submit, however, that such a broad position is not reasonable.

Claims 6 and 10 specifically recite that the decoding device starts decoding after accumulating the bit streams for a period of time. The period of time is defined as the value obtained by multiplying one frame time period with a value obtained by dividing the maximum possible transfer rate by the minimum possible transfer rate. Such facts are not capable of instant and unquestionable demonstration so as to defy dispute. Therefore, official notice of such facts is not proper. The Examiner must show further evidence of the specific limitations disclosed with respect to the decoding device as recited in claims 6 and 10, otherwise the rejection must be withdrawn.

If it is the Examiner's position that official notice does not include the specific limitations recited in claims 6 and 10, then the Examiner has not met the burden of showing a *prima facie* case of obviousness, as all of the limitations of claims 6 and 10 have not been shown in the prior art.

Accordingly, regardless of how the Examiner's use of official notice is interpreted, the Examiner's rejection of claims 6 and 10 is improper. Withdrawal of the rejection is respectfully requested.

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II. CONCLUSION

Accordingly, all claims 6, 9 and 10 are believed to be allowable and the application is believed to be in condition for allowance. A prompt action to such end is earnestly solicited.

Should the Examiner feel that a telephone interview would be helpful to facilitate favorable prosecution of the above-identified application, the Examiner is invited to contact the undersigned at the telephone number provided below.

Should a petition for an extension of time be necessary for the timely reply to the outstanding Office Action (or if such a petition has been made and an additional extension is necessary), petition is hereby made and the Commissioner is authorized to charge any fees (including additional claim fees) to Deposit Account No. 18-0988.

Respectfully submitted,

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